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SMALL WATER STORAGE AND CAREY ACT PROJECTS

JULY 19, 2023.—Ordered to be printed

Mr. MANCHIN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 843]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 843), to amend the Infrastructure Investment and Jobs Act to authorize the use of funds for certain additional Carey Act projects, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 843 is to amend the Infrastructure Investment and Jobs Act to authorize the use of funds for certain additional Carey Act projects.

BACKGROUND AND NEED

Investments in water infrastructure are needed to address the growing challenges across the West. Congress addressed this need by investing \$8.3 billion in the Bureau of Reclamation and western water infrastructure, as passed in the Infrastructure Investment and Jobs Act (IIJA; Public Law 117-58). The IIJA created several new grant programs and funding opportunities to address the diverse water infrastructure needs in the West.

The IIJA made a significant investment in the Bureau of Reclamation's aging infrastructure and included a \$100 million set-aside (IIJA section 40904(b)) to provide funding for the rehabilitation, reconstruction, and replacement of dams developed pursuant to the Carey Act (43 U.S.C. 641). S. 843, as ordered reported, clarifies eligibility to make funds available to additional Carey Act

projects after funding is provided to projects eligible under the original IIJA language.

LEGISLATIVE HISTORY

S. 843 was introduced by Senator Risch on March 16, 2023. At its business meeting on May 17, 2023, the Committee on Energy and Natural Resources ordered S. 843 favorably reported without amendment.

Similar legislation, S. 4176, was introduced in the 117th Congress by Senator Risch on May 10, 2022. The Subcommittee on Water and Power held a hearing on S. 4176 on May 25, 2022. At its business meeting on July 21, 2022, the Committee ordered S. 4176 reported favorably with amendment (Senate Report 117–188). Section 1(b) of S. 4176, relating to the minimum project size eligibility requirement and amending section 40903(b)(1)(B)(i) of the Infrastructure Investment and Jobs Act, was enacted into law as section 105 of division CC of the Consolidated Appropriations Act, 2023, Public Law 117–328 on December 29, 2022.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on May 17, 2023, by a voice vote of a quorum present, recommends that the Senate pass S. 843.

SECTION-BY-SECTION ANALYSIS

Section 1. Eligibility Under the Infrastructure Investment and Jobs Act of Additional Carey Act Projects for Certain Funds.

Section 1 amends section 40904(b) of the Infrastructure Investments and Jobs Act of 2021 (Public Law 117–58) and expands the list of eligible projects for the rehabilitation and reconstruction of dams developed pursuant to the Carey Act. This section stipulates that funds will be made available to these newly eligible projects after providing funds to projects eligible under the original program.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of S. 843, as ordered reported, has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at www.cbo.gov.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 843. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S. 843, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 843, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the May 25, 2022, subcommittee hearing on S. 4176, similar legislation that was filed during the 117th Congress, in the 117th Congress follows:

STATEMENT OF CAMILLE CALIMLIM TOUTON, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

The Carey Act authorized land grants to states, on which states could have irrigation dams and other water management facilities constructed. The BIL's original section 40904(b) authorizes up to \$100 million in funding for Carey Act dams meeting stated criteria, upon a Governor's request. The language of S. 4176 authorizes funding for additional Carey Act dams from this \$100 million, provided the funds have not been exhausted by this initial request. Financial assistance agreements would be developed to provide the funding.

Reclamation takes no issue with the amendment to section 40904(b), as provided, since it alerts those who might request funding that requests under the original authority take priority and funding may therefore be unavailable.

The amendments also include a provision lowering the threshold on the new Small Water Storage Program enacted last November in BIL from a 2,000 acre-foot minimum, to a two (2) acre-foot minimum. Reclamation's Small Storage Program is a newly established grant program authorized by sections 40901(1) and 40903 of BIL to promote federal assistance to enhance small scale water storage opportunities for future generations.

The reduction in project minimums, from 2,000 acre-feet down to 2 acre-feet would significantly alter the types of applications submitted for this specifically tailored program. It would also be challenging to apply the feasibility standards set forth for that program, for which Reclamation issued guidance in January, to such small projects. In August 2022, Reclamation plans to publish the first funding opportunity for the Small Storage Program with the planned distribution of \$20,000,000 in FY 2023.

Reclamation has existing programs under its WaterSMART grant opportunities that address these much smaller types of storage activities and would continue to encourage entities with needs for projects of that scale to apply to those programs, most of which have a lower non-federal cost share than the Small Storage Program. The Department looks forward to working with the sponsor and committee to address specific needs associated with the proposed amendments.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 4176, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 117-58

AN ACT To authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

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DIVISION D—ENERGY

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TITLE IX—WESTERN WATER INFRASTRUCTURE

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SEC. 40904. CRITICAL MAINTENANCE AND REPAIR.

* * * * *

(b) CAREY ACT PROJECTS.—[The Secretary]

*(1) IN GENERAL.—*The Secretary shall use amounts made available under section 40901(2)(B) to fund the rehabilitation, reconstruction, or replacement of a dam—

[(1)] (A) the construction of which began on or after January 1, 1905;

[(2)] (B) that was developed pursuant to section 4 of the Act of August 18, 1894 (commonly known as the “Carey Act”) (43 U.S.C. 641; 28 Stat. 422, chapter 301);

[(3)] (C) that the Governor of the State in which the dam is located has—

[(A)] (i) determined the dam has reached its useful life;

[(B)] (ii) determined the dam poses significant health and safety concerns; and

[(C)] (iii) requested Federal support; and

[(4)] (D) for which the estimated rehabilitation, reconstruction, or replacement, engineering, and permitting costs would exceed \$50,000,000.

(2) ADDITIONAL PROJECTS.—

*(A) IN GENERAL.—*On making the affirmative determinations described in subparagraph (B), the Secretary shall use amounts made available under section 40901(2)(B) to fund the rehabilitation, reconstruction, or replacement of any dams that were developed pursuant to, and continue to operate as dams under, section 4 of the Act of August 18, 1894 (commonly known as the “Carey Act”) (43 U.S.C. 641; 28 Stat. 422, chapter 301).

*(B) DETERMINATIONS DESCRIBED.—*The determinations referred to in subparagraph (A) are—

(i) a determination by the Secretary that any dams that meet the criteria described in paragraph (1) have received the necessary funding to complete rehabilitation, reconstruction, or replacement activities under this subsection; and

(ii) a determination by the Secretary that amounts made available under section 40901(2)(B) remain available.

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